

In the Matter of Merchant Mariner's Document No. Z-865051
Issued to : CHARLES P. MOORE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CHARLES P. MOORE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 22 September, 1954, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Merchant Mariner's Document No. Z-865051 issued to Charles P. Moore upon finding him guilty of misconduct based upon a specification alleging in substance that while acting as Boatswain in the service of the American SS STEEL DIRECTOR and under authority of the document above described, on or about 22 August, 1954, at Kahului, Wailuku District, Maui Island, Territory of Hawaii, he assaulted and battered the First Assistant Engineer of the ship.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel in the person of a union patrolman. Appellant entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the First Assistant Engineer, the Junior Engineer and the Master of the ship. The Investigating Officer also submitted in evidence several certified copies of entries in the ship's Official Logbook concerning this incident and certification by a District Magistrate of Wailuku, Maui, T. H., that Appellant was convicted in the District Court of Wailuku for assaulting and battering the First Assistant Engineer on 22 August, 1954, at Kahului, Maui, by punching him in the right eye with a fist.

In defense, Appellant offered in evidence the testimony of four members of the crew of the STEEL DIRECTOR. Three of these witnesses were in the bar at the time of the incident. Their testimony was that the First Assistant was injured but they did not see anybody hit him. One of these witnesses stated that Appellant did not hit the First Assistant.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-865051, and all other licenses, certificates and documents issued to this

Appellant by the United States Coast Guard or its predecessor authority, for a period of six months.

From that order, this appeal has been taken, and it is urged that Appellant is not guilty of the alleged offense but was found guilty because of the attitude of the officers on the ship and the findings of the Court is Hawaii; Appellant was sufficiently punished, for an alleged attack ashore, by having to pay his way home and paying a \$60.00 fine; Appellant has been going to sea for 14 years without prior troubles; and Appellant will lose his means of making a living for himself and his family if he is not able to go sea. In conclusion, Appellant expresses his hope that the suspension will be set aside.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On a voyage including the date of 22 August, 1954, Appellant was serving as Boatswain on board the American SS STEEL DIRECTOR and acting under authority of his Merchant Mariner's Document Z-865051.

At approximately 1200 on 22 August, 1954, the First Assistant Engineer went ashore with the Junior Engineer while the ship was docked at Kahului, Maui Island, Territory of Hawaii. The Appellant was first seen ashore by the First Assistant when he and the Junior Engineer stopped at a bar and grill, near the dock in Kahului, for a beer before returning to the ship at about 1800. No difficulty developed at this time.

Later on the same evening, the First Assistant and Junior Engineer went back to the bar and had 1 or 2 beers before going for a drive in an automobile. After this trip, the First Assistant and Junior Engineer returned to the same bar and were drinking beer together when Appellant walked up to the First Assistant and started talking with him. Appellant began to use abusive language and indicated that the First Assistant was "playing up" to the Chief Engineer in order to gain his favor. Appellant then returned to his seat at the bar and the First Assistant and Junior Engineer started to leave. The latter was preceding the First Assistant and again approached him. Before the First Assistant had reached the exit, Appellant struck with his right fist. He hit the First Assistant in his right eye and knocked him to the floor. The First Assistant was wearing eyeglasses and the broken glass cut his eyelid and right side of his face to such an extent that seven stitches were required.

The Junior Engineer did not see the blow struck because he was outside of the bar when it happened. But immediately afterwards, the Junior Engineer saw the First Assistant come out of the bar bleeding about his eye and holding pieces of his broken eyeglasses. This occurred at approximately 2100.

The First Assistant returned to the nearby vessel and received first aid treatment. The incident was reported to the Master and he had the First Assistant taken to the hospital because he was bleeding profusely. He returned to the ship at about 2245 that night.

The First Assistant preferred charges against Appellant and he was tried on the following day in the District Court of Wailuku, County of Maui, Territory of Hawaii. Appellant was convicted for assault and battery based upon the charge that he "unlawfully inflicted grievous bodily harm" upon the First Assistant by "punching the right eye of the said . . . [First Assistant Engineer] with his fist" Appellant was fined the sum of \$60.00. At the trial, seven members of the crew testified in behalf of Appellant and a resident of Kahului appeared as a witness against Appellant. This witness was in the bar at the time of the incident.

At Appellant's request, he was signed off the Shipping Articles by mutual consent when the ship arrived at Honolulu, T. H..

There is no record of prior disciplinary action having been taken against Appellant.

OPINION

There is considerable substantial evidence in the record to support the allegations that Appellant was the person who caused the First Assistant Engineer's injuries by striking him. The First Assistant testified that Appellant delivered the blow and this is corroborated by the record of Appellant's conviction by the Magistrate's Court at Wailuku, Maui Island, T. H. The only directly contradictory evidence was the testimony of one of Appellant's witnesses who stated that Appellant did not strike the First Assistant. The Examiner, who saw and heard the witnesses, stated specifically that he accepted the testimony of the First Assistant that he was hit by the Appellant.

This was an unprovoked attack upon a ship's officer by a seaman serving in a most responsible nonlicensed capacity. Due to these circumstances and the fact that the First Assistant was struck while wearing glasses, I consider that the order of six months suspension was lenient even though Appellant's prior clear record is taken into consideration. Although the incident occurred ashore, both men were still in the service of the ship.

The penal action taken by the court does not eliminate the necessity to impose a suspension by means of this remedial proceeding in order to enforce the strict discipline required of those who are engaged to serve on merchant vessels of the United States. As to Appellant's claim that he had to pay his own way home, the Master testified that Appellant was signed off at Honolulu at Appellant's request.

For these reasons, the order will be sustained despite any personal hardship which this action causes Appellant and his family.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 22 September 1944, is ~~AFFIRMED~~ **AFFIRMED**.

A. C. Richmond
Vice Admiral, United States Coast Guard

Commandant

Dated at Washington, D. C., this 4th day of January, 1955.